


Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191

FEE RECEIVED
FEB 24 2010
SURFACE
TRANSPORTATION BOARD

226497

Daniel G. Kruger
Attorney

Direct Dial Number:
(757) 533-4939
fax (757) 629-2607
email: Daniel.Kruger@nscorp.com

February 23, 2010

via UPS Next Day Air

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

ENTERED
Office of Proceedings

FEB 24 2010

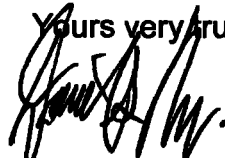
Part of
Public Record

Re: STB Docket No. AB-290 (Sub-No. 321X), Norfolk Southern
Railway Company – Discontinuance of Service – Petition for Exemption
In Hamilton County, Ohio

Dear Ms. Brown:

Enclosed for filing with the Board in the subject docket is an original and ten copies of Norfolk Southern Railway Company's (NSR) Petition for Exemption to discontinue service over a railroad line in the subject proceeding. Also, enclosed is a check in the amount of \$6,400.00 for the filing fee and three computer discs compatible with the Board's current word processing capabilities

Yours very truly,


Daniel G. Kruger

Enclosures

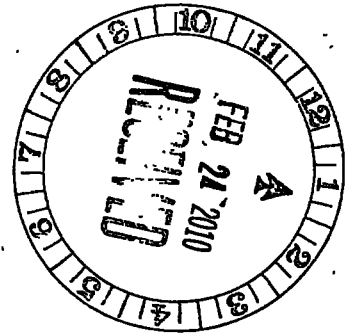
FILED

FEB 24 2010

SURFACE
TRANSPORTATION BOARD

226497

BEFORE THE
SURFACE TRANSPORTATION BOARD



DOCKET NO. AB-290 (SUB-NO. 321X)

NORFOLK SOUTHERN RAILWAY COMPANY

- DISCONTINUANCE OF SERVICE -

IN HAMILTON COUNTY, OHIO

PETITION FOR EXEMPTION

FILED
FEB 24 2010
SURFACE
TRANSPORTATION BOARD

ENTERED
Office of Proceedings
FEB 24 2010
Part of
Public Record

FEE RECEIVED
FEB 24 2010
SURFACE
TRANSPORTATION BOARD

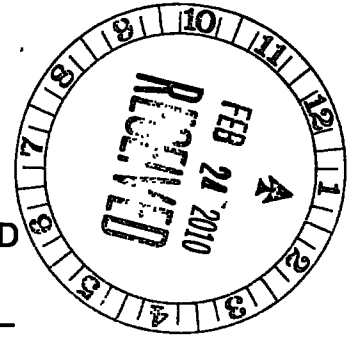
Daniel G. Kruger
Attorney
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510

(757) 533-4939
fax (757) 629-2607

Attorney for
Norfolk Southern Railway Company

Dated: February 23, 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Docket No. AB-290 (Sub-No. 321X)

Norfolk Southern Railway Company

- Discontinuance of Service -

In Hamilton County, Ohio

Petition for Exemption

Norfolk Southern Railway Company ("NSR") hereby petitions the Surface Transportation Board (the "Board" or "STB"), pursuant to the provisions of 49 U.S.C. 10502, as amended, for exemption from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over 5.70 miles of railroad line between Mileposts CT 2.10 and CT 7.80 in Hamilton County, Ohio (the "Line").

Section 10502 of Title 49 of the U.S. Code, as amended, directs the Board to exempt a transaction from the provisions of Title 49, Subtitle IV, Part A of the U.S. Code when the Board finds that the transaction satisfies certain statutory criteria. This petition demonstrates that the discontinuance of service for which NSR seeks exemption satisfies the statutory criteria.

Background

Norfolk Southern Railway Company proposes to discontinue service over a 5.70-mile segment of rail line between Mileposts CT 2.10 and CT 7.80 in Hamilton County, Ohio.

The line proposed for discontinuance of service has no active customers and formerly served NSR's Norwood Thoroughbred Bulk Terminal transload facility, which permanently closed on September 1, 2009. Prior to that date, there had been no other active customers for several years. There is no overhead traffic on the line.

Further Information

Further information supporting an exemption for the proposed abandonment is as follows:

(1) **Exact Name of Petitioner.** The exact name of petitioner is Norfolk Southern Railway Company (NSR). NSR operates a railroad system in 22 States throughout the Eastern United States, including Ohio, and in Ontario, Canada. NSR is a wholly-owned subsidiary of Norfolk Southern Corporation, a non-carrier.

(2) **Common Carrier Status.** Petitioner is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105.

(3) **Relief Sought.** Pursuant to 49 U.S.C. 10502 and the Board's regulations at 49 CFR 1152 Subpart F – *Exempt Abandonments and Discontinuances of Service*, the relief sought by petitioner is an exemption from the prior approval requirements of 49 U.S.C. 10903 for NSR to discontinue rail service over the Line.

(4) **Map.** A map of the subject Line is attached as Exhibit 1.

(5) **System Diagram Map.** NSR has not included this Line as a rail line to be abandoned or over which service is to be discontinued on NSR's system diagram map because NSR did not expect to file an application with the Board for authority to abandon or discontinue service over the line.

(6) **Reasons for Petition.** This petition is being filed in order for NSR to obtain from the Board an exemption to permit formal discontinuance of service over the subject 5.70-mile Line, which cannot be rehabilitated and continue to be maintained and operated without NSR incurring a substantial and unrecoverable financial loss. The Line has no active customers and formerly served NSR's Norwood Thoroughbred Bulk Terminal transload facility, which permanently closed on September 1, 2009. Prior to that date, there had been no other active customers for several years. There is no overhead traffic on the line.

(7) **Counsel.** Counsel for Petitioner to whom correspondence may be sent is:

Daniel G. Kruger
Attorney
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191

Counsel's Phone Number is: (757) 533-4939

(8) **Zip Codes; Stations**

The Line proposed for abandonment traverses United States Postal Service Zip Codes 45209, 45212, 45227 and 45229 and includes the stations of Hyde Park and Mariemont.

Reasons for Discontinuance of Service

NSR's formal discontinuance of service over the Line will permit NSR to avoid incurring continuing losses from the maintenance and operation of the Line. The discontinuance will permit NSR to use its resources and assets more productively in maintaining its core system, and providing transportation services to the shipping public generally.

Efforts to Continue Service

The discontinuance of service over the subject Line will not result in the loss of rail service to any current shippers or receivers of rail service. There are no other potential railroad customers located along this line of railroad. Former customers of NSR's Norwood Thoroughbred Bulk Terminal transload facility, which permanently closed on September 1, 2009, have relocated to other area facilities or made other transportation arrangements.

Communities on the Line

Communities on the Line are Idlewood, Ohio, Hyde Park, Ohio and Red Bank, Ohio, in Hamilton County, Ohio (population 845,303 according to 2000 Census). The entire line is within the Cincinnati, Ohio metropolitan area which will continue to receive rail service at other locations after the discontinuance of service over the subject Line.

Public Use, Trail Use, Offers of Financial Assistance

The offer of financial assistance (OFA) provisions and procedures at 49 U.S.C. 10904 and 49 CFR 1152.27 to acquire the Line for continued rail service do not apply to a discontinuance although the OFA provisions for a subsidy to provide continued rail

service for one year do apply to discontinuances of service.

Because this is a discontinuance of service proceeding and not an abandonment proceeding, the trail use/rail banking provisions and procedures of 16 U.S.C. 1247(d) (Trails Act) and 49 C.F.R. 1152.29 and for imposition of a public use condition under 49 U.S.C. 10905 and 49 C.F.R. 1152.28 are not applicable or appropriate.

Statement Concerning Federally Granted Right of Way

Based on information in NSR's possession, the line does not contain federally granted right-of-way. Any documentation later found in NSR's possession concerning this matter will be made available promptly to those requesting it.

Employee Protection

Since under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees, NSR is willing, as a condition to the Board granting this exemption, for the Board to order that the employee protective conditions set forth in *Oregon Short Line R. Co. -- Abandonment -- Goshen*, 360 I.C.C. 91 (1979), apply to this discontinuance of service transaction.

Environmental and Energy Impact; Historical Report

No environmental or historical documentation is required in a discontinuance of service proceeding under the Board's regulations at 49 C.F.R. 1105.6(c) and 49 C.F.R. 1105.8(b), respectively.

Passenger Service

There is no passenger service on the Line.

Draft Federal Register Notice

NSR attaches a draft notice of its petition to be published by the Board in the Federal Register within 20 days of the petition's filing and three computer discs compatible with the Board's current word processing capabilities with copies of this petition and the draft notice.

Notice

Newspaper notice concerning the filing of the petition was published on January 29, 2010, in *The Cincinnati Enquirer*, which is a newspaper of general circulation in Hamilton County, Ohio, the only county through which the Line runs. See Exhibit 2.

NSR's Petition Meets the Standards for the Board's Exemption of the Discontinuance of Service of the Line

Under 49 U.S.C. 10903, a railroad may not discontinue operations over or abandon a line of railroad without the Board's prior approval. Under 49 U.S.C. 10502, however, the Board is directed to exempt a transaction or service from otherwise applicable regulatory requirements or procedures when the Board finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power. The Line has no through traffic, no existent shippers, and is limited in length. The Line therefore meets both statutory criteria under which the Board is directed to exempt a transaction from otherwise applicable regulations: the absence of shippers and through traffic does not implicate the Board's regulatory responsibility to carry out the statutory


rail policy. In addition, the Line's limited length combines with the lack of shippers and through traffic to evince a transaction limited in scope and devoid of any potential for abuse of market power.

Conclusion

Therefore, Norfolk Southern Railway Company respectfully petitions the Board, pursuant to the provisions of 49 U.S.C. 10502, as amended, for exemption from the prior approval requirements of 49 U.S.C. 10903 for NSR to discontinue operations over a 5.70-mile line of railroad between Mileposts CT 2.10 and CT 7.80 in Hamilton County, Ohio.

Respectfully submitted

NORFOLK SOUTHERN
RAILWAY COMPANY

By 

John H. Friedmann
Vice President

Dated: February 23, 2010

Of Counsel:
Daniel G. Kruger, Attorney
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510
(757) 533-4939
fax (757) 629-2607

Attorney for
Norfolk Southern Railway Company

3

SS


John H. Friedmann

Rosalind McChesney
Notary Public

A circular notary seal for Rosalind McClean, a Notary Public in the Commonwealth of Virginia. The seal contains the text: ROSALIND McCLEAN, NOTARY PUBLIC, REG # 7300568, MY COMMISSION EXPIRES 3/31/2013, and COMMONWEALTH OF VIRGINIA.

CERTIFICATION

I hereby certify that the newspaper notice required by 49 C.F.R. §1152.50(d)(1) was given through publication on January 29, 2010, in *The Cincinnati Enquirer*, which is a newspaper of general circulation in Hamilton County, Ohio, the county through which the Line runs (see Exhibit 2).

A handwritten signature in black ink, appearing to read "Daniel G. Kruger", is written over a horizontal line.

Daniel G. Kruger

Dated: February 23, 2010

CERTIFICATE OF SERVICE

I certify that the foregoing petition in STB Docket No. AB-290 (Sub-No. 321X) has been served on the following parties, by first class mail, postage prepaid, this 23rd day of February, 2010:

Ohio Department of Transportation
Rail Development Commission
50 West Broad Street, Suite 1510
Columbus, OH 43215

Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

United States Dept. of Defense
SDDCTEA
Railroads for the National Defense
Program
709 Ward Drive, Bldg. 1900, Room
2E264
Scott AFB, IL 62225

Mr. Nick Chevance
Environmental Coordinator
Planning and Compliance Office
National Park Service – Midwest Region
601 Riverfront Drive
Omaha, NE 68102

Jan Matthews, Associate Director
U.S. Dept. of Interior-National Park
Service
Cultural Resources, Room 3126
1849 C Street, NW
Washington, DC 20240

U. S. Department of Agriculture
Chief of the Forest Service
1400 Independence Avenue, S.W.
Washington, D.C. 20250



Daniel G. Kruger

Dated: February 23, 2010

Federal Register: _____, 2010 (Volume _____, Number ____)]
[Notices]
[Page _____]

DEPARTMENT OF TRANSPORTATION

**Surface Transportation Board
[STB Docket No. AB-290 (Sub-No. 321X)]**

**Norfolk Southern Railway Company – Discontinuance of Service - Petition for
Exemption - in Hamilton County, Ohio**

On February 24, 2010, Norfolk Southern Railway Company (NSR), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903, to discontinue service over an approximately 5.70-mile line of railroad, extending between Milepost CT 2.10 and Milepost CT 7.80 in Hamilton County, Ohio (the Line). The Line traverses United States Postal Service Zip codes 45209, 45212, 45227 and 45229 and includes the stations of Hyde Park and Mariemont.

The Line does not contain federally granted rights-of-way. Any documentation in NSR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by _____, 2010. The offer of financial assistance (OFA) provisions and procedures at 49 U.S.C. 10904

and 49 CFR 1152.27 to acquire the Line for continued rail service do not apply to a discontinuance of rail service although the OFA provisions for a subsidy to provide continued rail service for one year do apply. Any offer of financial assistance (OFA) under 49 C.F.R. 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a \$_____ filing fee. See 49 C.F.R. 1002.2(f)(25).

Because this is a discontinuance proceeding and not an abandonment proceeding, trail use/rail banking and public use conditions are not appropriate.

All filings in response to this notice must refer to STB Docket No. AB-290 (Sub-No. 321X) and must be sent to: (1) Surface Transportation Board, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423-0001, and (2) Daniel G. Kruger, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510.

Replies to the NSR petition are due on or before _____, 2010.

Persons seeking further information concerning abandonment and discontinuance of service procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245-0238 or refer to the full abandonment or discontinuance regulations at 49 C.F.R. part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245-0295. [TDD for the hearing impaired is available at 1-800-877-8339.]

Because this is a discontinuance proceeding and not an abandonment

proceeding, no environmental or historic documentation is required in this proceeding under 49 CFR 1105.6(c) and 49 CFR 1105.8(b), respectively.

Board decisions and notices are available on our website at www.stb.dot.gov

Decided: _____, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

[FR Doc. _____ Filed _____]

BILLING CODE _____



Data use subject to license.

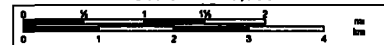
© DeLorme, DeLorme Street Atlas USA® 2010.

www.delorme.com

16



Scale 1 : 100,000



1" = 1.58 mi

Data Zoom 11-0

Affidavit of Publication

Publisher's Fee 460.87 Affidavit Charge 10.00

State of Ohio }

}

}

} SS.

}

Hamilton County }

}

Personally appeared

Janice Colston

Of the The Enquirer, a newspaper printed in Cincinnati, Ohio and published in Cincinnati, in said County and State, and of general circulation in said county, and as to the Kentucky Enquirer published in Ft. Mitchell, Kenton County, Kentucky, who being duly sworn, depose and saith that the advertisement of which the annexed is a true copy, has been published in the said newspaper 1 times, once in each issue as follows:

1/29/10

- ☒ Cincinnati Enquirer
☐ Kentucky Enquirer
☒ Cincinnati.Com

NOTICE OF INTENT TO
DISCONTINUE RAIL
SERVICE

Norfolk Southern Railway Company (NSR) gives notice that on or about February 24, 2010, it intends to file with the Surface Transportation Board (STB), Washington, DC 20423, a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903, permitting NSR's discontinuance of service over a 5.70-mile line of railroad between milepost CT 2.10 and milepost CT 7.80, which traverses through United States Postal Service ZIP Codes 45209, 45212, 45227 and 45229 in Hamilton County, Ohio. The line includes the stations of Hyde Park and Mariemont. The proceeding will be docketed as STB Docket No. AB-290 (Sub No. 321X). Appropriate offers of financial assistance to subsidize continued rail service can be filed with the STB. Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively. An original and 10 copies of any pleading that raises matters other than environmental issues (such as offers of financial assistance) must be filed directly with the STB's Section of Administration, Office of Proceedings, 395 E Street,

SW., Washington, DC 20423-0001 [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicant's representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238. Copies of any comments or requests for conditions should be served on the applicant's representative: Daniel G. Kruger, Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-9241, (757) 533-4939 534968

Janice Colston

AFFIANT

Sworn to before me, this

February 1, 2010

Roberta D. Hyde

Notary Public of Ohio



Roberta D. Hyde
Notary Public, State of Ohio
My Commission Expires 05-19-2013